



U.S. Department of Justice

The Petitioner shall be released immediately upon the conditions of (1) ankle monitoring or electronic monitoring, and (2) weekly call-ins to ICE.

So ordered: 4/1/20

VIA ECF

Hon. J. Paul Oetken
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007


J. PAUL OETKEN
United States District Judge

Re: *Avendaño Hernandez v. Decker*, No. 20 Civ. 1589 (JPO)

Dear Judge Oetken:

This Office represents the government in the above-referenced action in which the Court has ordered U.S. Immigration and Customs Enforcement (“ICE”) to immediately release the petitioner on reasonable conditions, and further ordered the parties to meet and confer and propose reasonable bond conditions. The parties have conferred and do not agree regarding the appropriate conditions of release. Each side is submitting its own letter.¹

The government respectfully submits that the Court should permit ICE to release the petitioner subject to the following conditions of release:

- Alternatives to Detention program with ankle monitoring or electronic monitoring;
- Weekly call-ins to ICE; and
- Home confinement with the following considerations: petitioner can leave his home for essentials, such as to obtain food and medicine, to go to work during hours to be reported to ICE, and to attend to medical needs.

The government submits that these conditions are reasonable and justified based on ICE’s valid concerns about the petitioner’s risk of flight and danger to the community. Specifically, petitioner is a danger due to his criminal history and his resistance by force during his arrest, during which ICE officers were injured, and also is a flight risk, given that he previously has been twice deported, returned to the United States without permission, and did not come to the attention of ICE until his arrest by the New York City Police Department. *See* Ex. A. With respect to the condition of home confinement, the government disagrees with petitioner’s counsel that this condition is unduly burdensome or onerous given ICE’s concerns above, and also because it is essentially equivalent to the general conditions currently being observed by New York City residents during the COVID-19 pandemic. Further, the basis of the petitioner’s

¹ Given the parties’ simultaneous submissions, the government respectfully requests leave to respond to petitioner’s submission to the extent the Court deems it necessary.

request for release from detention was in light of the conditions at the jail. ICE should be permitted to exercise its discretion in accordance with the INA as it carries out its mission.

The government notes that petitioner may seek to request that ICE modify the conditions of his release or seek such modification before an immigration judge at a later time.

We thank the Court for its consideration of this letter.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney
Southern District of New York

By: *s/Michael J. Byars*
MICHAEL J. BYARS
Assistant United States Attorney
Telephone: (212) 637-2793
Facsimile: (212) 637-2786
E-mail: michael.byars@usdoj.gov

cc: All counsel (via ECF)